

1 **FINANCE AND ADMINISTRATION CABINET**

2 **Kentucky Gas Pipeline Authority**

3 **(New Administrative Regulation)**

4 **200 KAR 26:010.** KGPA Operating procedures.

5 **RELATES TO:** KRS 353.750 – 353.776

6 **STATUTORY AUTHORITY:** KRS 353.754(5)

7 **NECESSITY, FUNCTION, AND CONFORMITY:** The Kentucky Gas Pipeline
8 Authority was created pursuant to KRS 353.750 to provide a financing mechanism for the
9 construction, reconstruction, improvement, or repair of any gas pipeline or appurtenant facilities.
10 KRS 353.754(5) provides that the authority shall promulgate administrative regulations for the
11 conducting of its business and affairs. This administrative regulation establishes the operating
12 procedures for the Kentucky Gas Pipeline Authority.

13 **Section 1.** Definitions.

14 (1) “Full-time job” means a position filled by an employee (excluding contract or
15 part-time employees) that the company projects will work, on an annual basis one thousand eight
16 hundred and twenty (1,820) hours.

17 (2) “KGPA” means the Kentucky Gas Pipeline Authority, created and established by
18 KRS 353.750.

19 (3) “KPABAC” means the Kentucky Private Activity Bond Allocation Committee,
20 created and established by KRS 103.286.

21 (4) “Project” is defined at KRS 353.750(5).

Section 2. Application process. (1) Eligible projects may be financed by the issuance of industrial revenue bonds by the KGPA pursuant to an agreement between the KGPA and the Applicant related to the project.

(2) Before filing an application requesting the issuance of industrial revenue bonds by the KGPA, an Applicant shall contact:

(a) bond counsel to determine if financing by the KGPA is feasible and any relevant federal tax issues associated with the issuance of any industrial revenue bonds for the project;

(b) the KPABAC if the bond issue qualifies as a private activity bond and the applicant intends to request an allocation of a portion of the state private activity bond volume cap;

(c) 1. potential underwriters, to receive a commitment to purchase the bonds, if the issue is to be publicly sold; or

2. other purchasers, to receive a commitment to purchase the bonds, if the issue is to be privately placed; and

(d) governmental entities that will be impacted by expected lost property tax revenues as a result of the proposed bond issue.

(3) An Applicant requesting the issuance of industrial revenue bonds by the KGPA shall submit an application using the KGPA Application. The application shall be submitted to the KGPA at least ninety (90) days prior to the anticipated date of issuance of the industrial revenue bonds, and shall be accompanied by:

(a) a five hundred dollar (\$500) non-refundable application fee;

(b) resolutions or other documents of support from governmental entities impacted by expected lost property tax revenues as a result of the proposed bond issue; and

1 (c) a KGPA New Bond Issue Report.

2 **Section 3.** Evaluation criteria. The following criteria may be considered by the KGPA
3 when evaluating a project application and issuance of industrial revenue bonds for the project:

4 (1) number of new full-time jobs expected to be created or retained as a result of the
5 project for which the bonds are to be issued;

6 (2) average hourly wage expected to be paid for each full-time job created or
7 retained;

8 (3) employee benefits expected to be offered;

9 (4) amount of capital investment being made in the project by the Applicant;

10 (5) unemployment rate in the county or counties of the proposed project;

11 (6) state tax incentive programs and grant or loan programs in which the Applicant
12 has previously participated with another project or is seeking to participate in with the proposed
13 project;

14 (7) whether the proposed project would be eligible to participate in a tax incentive,
15 grant, or loan program offered under KRS Chapters 148 or 154;

16 (8) new tax revenues which the Applicant anticipates will be produced by the project
17 over the life of the bond issue, i.e. severance tax revenue, corporate income tax, sales tax,
18 occupational tax, etc.;

19 (9) approximate amount and percentage of state and local ad valorem taxes expected
20 to be lost as a result of the Applicant leasing all or a portion of the project from the KGPA;

21 (10) whether the proposed project will result in an increase in current user rates; and

22 (11) whether the rate structure will be regulated by the Kentucky Public Service
23 Commission or any other public regulatory body.

24 **Section 4.** Approval process. (1) The KGPA shall evidence its approval or

1 disapproval of the proposed project and related bond issue through the adoption of a resolution
2 authorizing the project and issuance, execution, and delivery of the bonds. The resolution shall
3 also approve any related Lease Agreement, Loan Agreement, or similar Agreement, and
4 authorize the appropriate officials of the KGPA to negotiate the terms of and execute any such
5 Agreement. A copy of the resolution shall be sent to the Applicant.

6 (2) Sale of the bonds shall not occur before receipt of the resolution.

7 (3) As a condition of approval of the proposed bond issuance, the KGPA shall require
8 the execution and delivery of a Lease Agreement, Loan Agreement, or similar Agreement
9 between the Applicant and the KGPA providing for or relating to the financing of the
10 construction, reconstruction, improvement, or repair of the proposed project, if the Applicant will
11 be leasing all or a portion of the industrial project from the KGPA.

12 (4) Upon approval of the project by the KGPA and prior to any bonds being issued
13 for the project:

14 (a) an Applicant shall seek final approval by the applicable regulatory body or
15 authority; and

16 (b) the listed entities shall review and approve the proposed bond issue:

17 1. State Property and Buildings Commission (SPBC), pursuant to KRS
18 56.450;

19 2. Capitol Projects and Bond Oversight Committee, pursuant to KRS 45.810;
20 and

21 3. Office of Financial Management in the Office of the Controller within the
22 Finance and Administration Cabinet, pursuant to KRS 42.420.

23 (d) the Secretary of the Finance and Administration Cabinet shall certify that the

issuance of revenue bonds in relation to the project and the terms of the issue shall not require an appropriation of state general funds, in accordance with KRS 56.870(3).

(5) The Applicant shall complete a KGPA Bond Information Disclosure form and submit it to the Office of Financial Management no later than five (5) days after the bond or note sale.

Section 5. Reporting requirements.

(1) By January 1 of each year, the KGPA shall make an annual report of its activities for the preceding fiscal year to the Office of the State Budget Director and to the Interim Joint Committee on Appropriations and Revenue. Each report shall set forth a complete operating and financial statement covering its operations during the fiscal year.

(2) The KGPA shall provide for an audit of its books and accounts to be made within ninety (90) days after the close of each fiscal year by certified public accountants, and the cost of the audit may be treated as a part of the cost of construction of the project.

Section 6. Incorporation by Reference.

(1) The following material is incorporated by reference:

- (a) KGPA Application (8/05);
- (b) KGPA New Bond Issue Report (8/05); and
- (c) KGPA Bond Information Disclosure (8/05).

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Finance and Administration Cabinet, Office of the Secretary, Room 383 Capitol Annex, Frankfort, Kentucky 40601, Monday through Friday, 8 a.m. to 4:30 p.m.

Approved:

R. B. Rudolph, Jr., Chair
Kentucky Gas Pipeline Authority

Date

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this proposed amendment to the administrative regulation shall be held on October 26, 2005, at 10:00 a.m. in Room 386 Capitol Annex, Frankfort, Kentucky 40601. Individuals interested in being heard at this hearing shall notify this agency in writing at least five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by October 19, 2005, the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on this proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through October 31, 2005. Send written notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person.

CONTACT PERSON: Kristen Webb, Legislative Director, Finance and Administration Cabinet, Office of the Secretary, Room 383 Capitol Annex, Frankfort, Kentucky 40601, Phone (502) 564-4240, FAX (502) 564-6785.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Administrative Regulation #: 200 KAR 26:010. KGPA operating procedures.

Contact person: Kristen Webb, Legislative Director, Finance and Administration Cabinet, Office of the Secretary, Room 383 Capitol Annex, Frankfort, Kentucky 40601, Phone (502) 564-4240, FAX (502) 564-6785.

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation establishes the operating procedures for the Kentucky Gas Pipeline Authority.

(b) The necessity of this administrative regulation: The Kentucky Gas Pipeline Authority was created pursuant to KRS 353.750 to provide a financing mechanism for the construction, reconstruction, improvement, or repair of any gas pipeline or appurtenant facilities. KRS 353.754(5) provides that the authority shall promulgate administrative regulations for the conducting of its business and affairs.

(c) How this administrative regulation conforms to the content of the authorizing statutes: This administrative regulation establishes the operating procedures for the Kentucky Gas Pipeline Authority, in accordance with KRS 353.754.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: This administrative regulation sets out the application and approval process for qualified projects.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: N/A

(b) The necessity of the amendment to this administrative regulation: N/A

(c) How the amendment conforms to the content of the authorizing statutes: N/A

(d) How the amendment will assist in the effective administration of the statutes: N/A

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This administrative regulation may affect local governments, school districts, and other special taxing districts (i.e. fire districts and library districts.)

(4) Provide an assessment of how the above group or groups will be impacted by either the implementation of this administrative regulation, if new, or by the change if it is an amendment: There will be a potential for loss of property tax revenues for local governments and other taxing districts; and an increase in severance tax revenues for the state.

(5) Provide an estimate of how much it will cost to implement this administrative regulation:

(a) Initially: Minimal

(b) On a continuing basis: Minimal

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: Appropriations to the Finance and Administration Cabinet.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new or by the change if it is an amendment: No increased funding will be necessary.

(8) State whether or not this administrative regulation establishes any fees or directly

or indirectly increases any fees: A \$500 nonrefundable application fee is established.

(9) TIERING: Is tiering applied? (Explain why tiering was or was not used.) No. The procedures set out in this administrative regulation apply to all entities equally.

SUMMARY OF INCORPORATED MATERIAL

Pursuant to KRS 13A.2255, the following is a summary of the material incorporated by reference in 200 KAR 26:010. KGPA Operating procedures:

Summary

Incorporated by reference in this administrative regulation are the KGPA Application, KGPA New Bond Issue Report, and KGPA Bond Information Disclosure form. These documents are required to be submitted by an Applicant requesting financing from the Kentucky Gas Pipeline Authority for the construction, reconstruction, improvement, or repair of any gas pipeline or appurtenant facilities, in accordance with KRS 353.750 – 353.776. The materials incorporated by reference consist of eleven (11) pages.

Statutory Authority

The Kentucky Gas Pipeline Authority was created pursuant to KRS 353.750 to provide a financing mechanism for the construction, reconstruction, improvement, or repair of any gas pipeline or appurtenant facilities. KRS 353.754(5) provides that the authority shall promulgate administrative regulations for the conducting of its business and affairs. This administrative regulation establishes the operating procedures for the Kentucky Gas Pipeline Authority.

Summary of the materials incorporated by reference:

- KGPA Application – must be submitted by an Applicant requesting issuance of industrial revenue bonds by the Kentucky Gas Pipeline Authority.
- KGPA New Bond Issue Report – report of a proposed new bond issue required in accordance with KRS 45.810.
- KGPA Bond Information Disclosure form – lists the costs relating to issuance of revenue bonds, in accordance with KRS 45.816.